

MRS. HELEN HARVEY

MARCH 11, 1958.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1342]

The Committee on the Judiciary, to whom was referred the bill (H. R. 1342), for the relief of Mrs. Helen Harvey, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 10, strike out the date "1954", and insert in lieu thereof "1953".

This bill provides as follows:

That Mrs. Helen Harvey, of Alexandria, Virginia, is hereby relieved of all liability to refund to the United States the sum of \$1,750. Such sum represents the amount of the voluntary allotment payments which were erroneously made by the Department of the Army to the said Mrs. Helen Harvey, as the wife of Warrant Officer (junior grade) Merle L. Harvey, United States Army, during the period beginning April 1, 1953, and ending October 31, 1954, after the said Merle L. Harvey had been discharged from the Army. In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, full credit shall be given for the amount for which liability is relieved by this Act.

The Department of the Army in its report dated November 15, 1957, gives in detail the history of this proposed legislation. Your committee has given careful consideration to the bill and has amended

it to conform with the recommendation of the Army and recommend favorable consideration of the bill. The Department of the Army report is as follows:

DEPARTMENT OF THE ARMY,
Washington, D. C., November 15, 1957.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to H. R. 1342, 85th Congress, a bill for the relief of Mrs. Helen Harvey.

This bill provides as follows:

"That Mrs. Helen Harvey, of Alexandria, Virginia, is hereby relieved of all liability to refund to the United States the sum of \$1,750. Such sum represents the amount of the voluntary allotment payments which were erroneously made by the Department of the Army to the said Mrs. Helen Harvey, as the wife of Warrant Officer (junior grade) Merle L. Harvey, United States Army, during the period beginning April 1, 1953, and ending October 31, 1954, after the said Merle L. Harvey had been discharged from the Army. In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, full credit shall be given for the amount for which liability is relieved by this Act."

The Department of the Army interposes no objection to the above-mentioned bill.

The records of the Department of the Army reveal that Merle L. Harvey was born at Red Oak, Iowa, on January 7, 1919. After enlisting in the Oregon National Guard on June 8, 1939, with serial number 20933877, he was called to active Federal service on September 16, 1940, and served until he was honorably discharged in the grade of staff sergeant on September 27, 1945. Thereafter, on January 23, 1946, he enlisted in the Regular Army in his former grade and served until that enlistment expired on March 12, 1949. Next day, March 13, 1949, he reenlisted in the Regular Army for an indefinite term.

The subject claimant was married to Merle L. Harvey, then a sergeant first class, in June 1950. On November 23, 1951, he was discharged to accept a temporary appointment as warrant officer junior grade in the Army of the United States, with serial number W-2150903. Upon being appointed a warrant officer, he initiated a class E allotment to his wife, Mrs. Helen Harvey, in the amount of \$250 per month effective December 1951. Class E allotment refers to the voluntary allotment of a definite portion of military pay which is authorized to be paid to another person or institution for the support of the allotter's family or for savings, including a checking account.

Such allotment continued in force until March 1952, at which time Warrant Officer Harvey was listed as absent without authorized leave from his organization, Service Company of the 503d Airborne Infantry Regiment, located at Fort Campbell, Ky., effective March 10, 1952. Prompt administrative action was taken to discontinue the allotment because of his a. w. o. l. status, and the last payment thereof was made for the month of March 1952. He remained so absent without authority until he returned to military control at Fort Lewis, Wash., on July 30, 1952.

In September 1952 he was admitted to Madigan Army Hospital, Tacoma, Wash., for psychiatric observation and, on September 30, 1952, a board of medical officers determined that he was mentally incompetent to receive his pay and allowances. From the date of his admission to the hospital, Warrant Officer Harvey had received continuous psychiatric treatment and the allotment therefore remained discontinued. Finally, on December 7, 1952, Mrs. Harvey wrote to the Military Pay Division, Army Finance Center, St. Louis 20, Mo., and inquired:

"Would you please investigate the pay status situation of my husband who is W. O. (jg.) Merle L. Harvey, W-2150903 and presently confined to the Madigan Army Hospital at Tacoma, Wash.?"

My class E allotment check was stopped on March 10, 1952, and I have never received any more checks since that time.

It is very important that I receive this information as soon as possible because personal family problems have arisen which make it necessary to make future plans accordingly.

In response to her letter the Finance Center, by letter of January 6, 1953, replied:

"Reference is made to your letter dated December 7, 1952, relative to an allotment from the pay account of your husband, W. O. (jg.) Merle Harvey, W-2150903, who was declared mentally incompetent on September 30, 1952.

A class E allotment of \$250 has been authorized in your behalf, effective December 1, 1952. The first check, representing payment for the month of December, will be forwarded within a few days. * * *

Payment of the allotment was thereby once again resumed.

As Warrant Officer Harvey had responded favorably to treatment, he appeared before a different board of medical officers on January 13, 1953, and was then declared mentally competent to manage his own funds. However, he made no change in the status of his class E allotment and permitted it to continue. Subsequently, on February 13, 1953, a physical evaluation board determined that he was unfit for further duty because of physical disability, which proceedings were forwarded to the Army Physical Review Council, and transmitted by that body to The Adjutant General of the Army with a recommendation that the findings be approved. Such action was taken by this Department on February 26, 1953, and Warrant Officer Harvey was relieved from active duty by reason of physical disability on March 7, 1953.

As previously stated, the class E allotment in the amount of \$250 per month to Mrs. Harvey was reinstated effective December 1, 1952. However, due to administrative error it was paid subsequent to the date of his relief from active duty, and was not actually terminated until November 1953. The monthly payments of \$250 which were erroneously paid from April 1953 through October 1953 constitute the \$1,750 indebtedness to the Government for which she now seeks relief.

This Department was unsuccessful in efforts to obtain repayment of her indebtedness in any amount and, on October 27, 1954, declared such indebtedness uncollectible and referred the matter to the General Accounting Office for further collection action.

It was later ascertained that Mrs. Harvey was employed by the Veterans' Administration, Washington, D. C., and on September 21,

1956, the Office of the Comptroller General advised that Administration, in part as follows:

"The indebtedness to the United States of Mrs. Helen B. Harvey, 528 North Howard Street, Apartment 303, Alexandria, Va., has been reported to this office for collection.

"Since Mrs. Harvey is presently employed at the Veterans' Benefits Office, Veterans' Administration, Washington 25, D. C., it is suggested that she be requested to arrange for prompt payment of this debt, either direct to this office or by deduction from current compensation, and that this office be advised of arrangements made."

When Mrs. Harvey sought Red Cross assistance in this matter, the Red Cross field director, Central Office, Washington, D. C., contacted the Red Cross liaison representative at the Army Finance Center, Indianapolis, Ind., and in a letter dated October 24, 1956, stated:

"The wife of the above-named warrant officer, United States Army, has requested Red Cross assistance with a problem concerned with an alleged overpayment of \$1,750, voluntary allotment, paid to her by Army authorities subsequent to her husband's discharge from service. * * *

"She reports that he was hospitalized for more than 6 months in an Army mental hospital and eventually separated from service with separation pay. Following his discharge, in March 1953, the veteran was a patient in the VA hospital, Perry Point, Md. Subsequent to his release from the hospital he disappeared and Mrs. Harvey has not heard from him since late in 1953. * * *

"Mrs. Harvey acknowledges receipt of the monthly allotment subsequent to March 1953, but she contends that she was of the opinion that the checks represented the allotment payments which she did not receive while her husband was in an Army hospital following the a. w. o. l. episode." * * *

This Department is informed that no amount of the indebtedness has ever been repaid by Mrs. Harvey.

The courts have consistently held that a recipient of erroneous payments from the United States, made through administrative error of its officers, is bound to make restitution to the United States (see citations, 35 Comp. Gen. 401, 402 (1956)). It would appear that private legislation, which would relieve the recipient of such obligation to refund the overpayment, has generally been regarded as discriminatory and unfavorably considered where the circumstances do not establish that requiring repayment would be unjust and result in undue hardship.

In the present case Mrs. Harvey apparently believed that the allotment checks which she received subsequent to her husband's discharge were for payments she did not receive following his return from the unauthorized absence and hospitalization. The erroneous payments did not originate from any fault on her part, but were due solely to administrative error.

It is the understanding of this Department that she receives an annual salary of \$3,925, from which she must support herself, a daughter in high school, and assist an invalid mother and father who have only a small retirement income. It therefore appears that it would be an undue hardship upon this claimant to now repay the money received. Should the Congress decide to grant the relief sought, the Department of the Army would offer no objection. However,

for the purpose of accuracy, the terminal date of erroneous payments should be October 31, 1953, rather than October 31, 1954, as presently recited in line 10 of the bill.

This bill, if enacted, would relieve Mrs. Helen Harvey of the obligation to refund to the United States the sum of \$1,750.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

WILBER M. BRUCKER;
Secretary of the Army.

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for the purpose of accuracy, the terminal date of erroneous payments should be October 31, 1958, rather than October 31, 1957, as presently recited in line 10 of the bill.

This bill, if enacted, would relieve Mrs. Helen Harvey of the obligation to refund to the United States the sum of \$1,750.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

WALTER M. BRUCKNER,
Secretary of the Army.

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